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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/851,029	05/07/2001	Frank Addante	16113-001001	2494
26192 7590 06/12/2009 FISH & RICHARDSON P.C. PO BOX 1022 MINNEAPOLIS, MN 55440-1022			EXAMINER NGUYEN, TRI V	
			ART UNIT 1796	PAPER NUMBER
			NOTIFICATION DATE 06/12/2009	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATDOCTC@fr.com

Office Action Summary	Application No. 09/851,029	Applicant(s) ADDANTE, FRANK	
	Examiner TRI V. NGUYEN	Art Unit 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 78-88 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 78-88 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>03/30/09</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Request for Continued Examination

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 03/30/09 has been entered.

Response to Amendment

2. Upon the submission filed on 03/30/09, Claims 1-77 are cancelled. The currently pending claims are Claims 78-88.

Applicants' remarks have been carefully considered; however, a new ground of rejections is provided.

Claim Rejections - 35 USC § 103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 78, 80-83 are 85-87 are rejected under 35 U.S.C. 103(a) as being unpatentable over Merriman et al. (US 2002/0072965) in view of Messer et al. (WO 98/57285).

The Merriman et al. reference disclose a method of tracking a click-through exposure via a cookie from an ad server once a user access an affiliate website via a banner ad.

Regarding claim 78, the Merriman et al. reference discloses a method of compiling transaction information comprising:

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a) formatting a cookie at an ad server, the cookie including information related to a selection of an advertisement at a content site (§ 18, 19, 26 and 39);

b) storing a cookie at a user node of a user who made the selection ((§ 18, 19, 26 and 39); and

c) providing the cookie from the user node to the ad server whenever the user makes a transaction at a sale site associated with the advertisement ((§ 18, 19, 26 and 39).

The Merriman et al. reference discloses the claimed invention but does not explicitly disclose the feature of tracking subsequent sales transactions at the affiliate/merchant sites. In an analogous art, Messer et al. teach the process of tracking subsequent sales at a merchant sites from users directed from a content site via a click trough of an ad banner and gaining of specific offer compensation (abstract, page 5, lines 23-32; page 7, line 20 to page 8, line 14; page 13, line 24 to page 15, line 16). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of the Merriman et al. reference. One would have been motivated to modify the method of compiling transaction information since collecting information regarding the various sales behavior would allows for a more accurate tracking and monitoring of the viewing and transaction session of the user and gain the benefit of a tier/scaling payment schematic.

Regarding claim 80, Merriman et al. and Messer disclose the method of compiling transaction information of claim 78 further comprising providing a query string from the user node to the ad server, wherein the query string includes information related to the

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transaction made at the sale site (Messer: page 13, line 24 to page 15, line 16). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of the Merriman et al. reference. One would have been motivated to modify the method of compiling transaction information since collecting information regarding the various sales behavior would allow for a more accurate tracking and monitoring of the viewing and transaction session of the user and gain the benefit of a tier/scaling payment schematic.

Regarding claim 81, Merriman et al. and Messer disclose the method of compiling transaction information of claim 80 wherein the information related to the transaction includes an identification of a purchased product (Messer: page 13, line 24 to page 15, line 16). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of the Merriman et al. reference. One would have been motivated to modify the method of compiling transaction information since collecting information regarding the various sales behavior would allow for a more accurate tracking and monitoring of the viewing and transaction session of the user and gain the benefit of a tier/scaling payment schematic targeted to specific offer compensation.

Regarding claim 82, Merriman et al. and Messer disclose the method of compiling transaction information of claim 81 wherein the information related to the transaction includes a purchase price of the purchased product (Messer: page 13, line 24 to page 15, line 16). Therefore, it would have been obvious to one having ordinary

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skill in the art at the time the invention was made to modify the method of the Merriman et al. reference. One would have been motivated to modify the method of compiling transaction information since collecting information regarding the various sales behavior would allow for a more accurate tracking and monitoring of the viewing and transaction session of the user and gain the benefit of a tier/scaling payment schematic targeted to specific offer compensation.

Regarding claim 83, Merriman et al. and Messer disclose the method of compiling transaction information of claim 80 further comprising recording at least a portion of the information related to the selection of the advertisement and at least a portion of the information related to the transaction into a data structure for the transaction information in the transaction database (Messer: page 13, line 24 to page 15, line 16). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of the Merriman et al. reference. One would have been motivated to modify the method of compiling transaction information since collecting information regarding the various sales behavior would allow for a more accurate tracking and monitoring of the viewing and transaction session of the user and gain the benefit of a tier/scaling payment schematic targeted to specific offer compensation.

Regarding claim 85, Merriman et al. and Messer disclose the method of compiling transaction information of claim 83 wherein the data structure for the transaction information includes information related to the content site, and the method

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further includes crediting the content site with the transaction (Messer: page 13, line 24 to page 15, line 16). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of the Merriman et al. reference. One would have been motivated to modify the method of compiling transaction information since collecting information regarding the various sales behavior would allow for a more accurate tracking and monitoring of the viewing and transaction session of the user and gain the benefit of a tier/scaling payment schematic targeted to specific offer compensation.

Regarding claim 86, Merriman et al. and Messer disclose the method of compiling transaction information of claim 83 wherein the data structure for the transaction information includes information related to the advertisement, and the method further includes assessing effectiveness of the advertisement by counting a number of transactions related to the advertisement (Messer: page 13, line 24 to page 15, line 16). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of the Merriman et al. reference. One would have been motivated to modify the method of compiling transaction information since collecting information regarding the various sales behavior would allow for a more accurate tracking and monitoring of the viewing and transaction session of the user and gain the benefit of a tier/scaling payment schematic targeted to specific offer compensation.

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Regarding claim 87, Merriman et al. and Messer disclose the method of compiling transaction information of claim 83 wherein the data structure for the transaction information includes information related to a campaign during which the advertisement is provided, and the method further includes assessing effectiveness of the campaign by counting a number of transactions related to the campaign (Messer: page 13, line 24 to page 15, line 16). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of the Merriman et al. reference. One would have been motivated to modify the method of compiling transaction information since collecting information regarding the various sales behavior would allow for a more accurate tracking and monitoring of the viewing and transaction session of the user and gain the benefit of a tier/scaling payment schematic targeted to specific offer compensation.

5. Claims 79 and 84 are rejected under 35 U.S.C. 103(a) as being unpatentable over Merriman et al. and Messer in view of Angles et al. (5,933,811).

Regarding claim 79, Merriman et al. and Messer disclose the method of compiling transaction information of claim 78 but do not explicitly teach that wherein the cookie further includes information related to a time at which the selection of the advertisement has been made. In an analogous art, Angles et al. discloses the use of cookies to gather information regarding the time at which the ad banner is selected (col 11, lines 5-49; col 15, line 65 to col 16, line 15 and col 20, lines 18-37). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of Merriman et al. and Messer. One would have been motivated to

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modify the method of compiling transaction information since collecting information regarding the time of selection of the advertisement allows for a more accurate tracking and monitoring of the viewing and transaction session of the user.

Regarding claim 84, Merriman et al. and Messer disclose the method of compiling transaction information of claim 83 but do not explicitly teach wherein the data structure for the transaction information includes a time of the selection of the advertisement and a time of the transaction, and the method further includes comparing the time of the selection with the time of the transaction to assess time elapsed between the selection and the transaction. In an analogous art, Angles et al. discloses gathering information regarding the time at which the ad banner is selected (col 11, lines 5-49; col 15, line 65 to col 16, line 15 and col 20, lines 18-37). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of Merriman et al. and Messer. One would have been motivated to modify the method of compiling transaction information since collecting information regarding the time of selection of the advertisement and subsequently making a comparison between the elapsed time between the selection and the transaction allows for a more accurate tracking and monitoring of the viewing and transaction session of the user, thus collecting important information concerning the effectiveness of the pertinent architectural design.

6. Claim 88 is rejected under 35 U.S.C. 103(a) as being unpatentable over Merriman et al. and Messer in view of Davis et al. (5,796,952).

Regarding claim 88, Merriman et al. and Messer disclose the method of compiling

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transaction information of claim 83 but do not explicitly teach wherein the data structure for the transaction information includes information related to an amount of time taken to make the transaction, and the method further includes assessing customer serving capabilities of the sale site by analyzing the amount of time taken to make the transaction. In an analogous art, Davis et al. discloses gathering information regarding tracking the user's interaction with a Web page by monitoring time (col 4, lines 37-54; col 8, lines 6-20). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of Merriman et al. and Messer. One would have been motivated to modify the method of compiling transaction information since collecting information regarding the elapsed time of the transaction allows for a more accurate tracking and monitoring of the viewing and transaction session of the user, thus collecting important information concerning the effectiveness of the pertinent architectural design of the merchant site and helping in future modifications to enhance the user's experience at the merchant site.

Response to Arguments

7. Applicant's arguments with respect to claims 78-88 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Nyhan et al. (US 2006/0129457) teach a method of monitoring on-line advertising via cookies.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to TRI V. NGUYEN whose telephone number is (571)272-6965. The examiner can normally be reached on M-F 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571) 272-1119 and Eric Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/T. V. N./
Examiner, Art Unit 1796
June 10, 2009

/Eric W. Stamber/
Supervisory Patent Examiner, Art Unit 3622